U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE S. CHENG and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, El Monte, CA

Docket No. 03-610; Submitted on the Record;
Issued June 13, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant, a 46-year-old revenue agent, filed a notice of occupational disease on January 18, 2001 alleging that she developed depression and anxiety disorder due to a hostile working environment. The Office of Workers' Compensation Programs denied appellant's claim on July 27, 2001 finding that she failed to substantiate a compensable factor of employment. Appellant requested an oral hearing and by decision dated October 4, 2002, the hearing representative affirmed the Office's decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.[1]

Appellant attributed her emotional condition to actions of her supervisor, Alice Shiotsugu. She alleged that Ms. Shiotsugu pressured her to do a personal favor and asserted that, when appellant declined, Ms. Shiotsugu assigned her an overage case in February 2000. According to appellant, Ms. Shiotsugu failed to inform appellant of the new procedures to

[1] *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

prevent the case from being barred by statute. Appellant alleged that Ms. Shiotsugu used another employee to verbally abuse appellant on July 12, 2000 and that Ms. Shiotsugu blamed appellant for the barred case. When appellant complained, Ms. Shiotsugu allegedly informed her that her difficulties would make her stronger and on another occasion chastised her after hours for calling the case to the attention of the branch chief. As a result of this call, Ms. Shiotsugu allegedly blamed appellant for her failure to receive a cash award. Appellant stated that Ms. Shiotsugu made a false statement on September 8, 2000 in an attempt to destroy her career and that she verbally threatened to lower appellant's appraisal. She alleged that Ms. Shiotsugu asked her to act as a union representative for her own group meeting, and that she felt pressured to do so in violation of the bargaining agreement. Appellant alleged that Ms. Shiotsugu withheld reimbursement of her travel expenses and that she made a false allegation in December 2000. She stated that, from December 20, 2000 to January 30, 2001, Ms. Shiotsugu withheld five cases from appellant and that appellant had to go through a supervisor to receive three of the cases and that Ms. Shiotsugu assigned appellant a lower grade case to downgrade her appraisal. Appellant stated that, on January 13, 2001, Ms. Shiotsugu abused her during a workload review which lasted three and a half hours with no lunch break. Appellant also alleged that Ms. Shiotsugu removed a case from a locked drawer in appellant's office and that she did not timely respond to appellant's request for postage stamps.

In support of her allegations, appellant submitted a statement dated March 21, 2001 from Debbie Brisco Earner, another member of Ms. Shiotsugu's group. Ms. Earner stated that she observed or became aware that appellant received unfair treatment from Ms. Shiotsugu. She stated that appellant was given a below-grade case which Ms. Shiotsugu knew was inappropriate. Ms. Earner stated that she did not receive any instruction regarding the new statute procedure and that the group did not receive training. She further stated that Ms. Shiotsugu would not release appellant's cases to her without a workload meeting which Ms. Earner stated was not standard procedure. Ms. Earner stated that during appellant's workload review appellant was instructed as if she were a new agent.

Appellant also submitted a settlement agreement dated July 31, 2002 in which the employing establishment agreed to restore 200 hours of sick leave and to review and remove negative documentation written about appellant by Ms. Shiotsugu from May 1, 2000 to June 15, 2001 and to make best efforts to ensure that appellant was not directly supervised by Ms. Shiotsugu in the future. The parties agreed that there was no admission of any violation of law, statutes or regulations or of any fact or allegation.

Regarding appellant's allegations that the employing establishment, through Ms. Shiotsugu, engaged in improper disciplinary actions, unfairly evaluated appellant's performance, wrongly addressed leave and improperly assigned work duties, the Board finds that these allegations related to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.[2] The Board has held that an employing establishment's refusal to give an employee training as requested is an administrative matter, which is not covered under

[2] 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gates*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

the Act unless the refusal constitutes error or abuse.[3] As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[4]

In this case, appellant has not submitted any evidence that Ms. Shiotsugu erred by improperly assigning work duties, administering training or in conducting the workload meeting. In support of her allegations, appellant submitted a statement from Ms. Earner that she was given a below-grade case which Ms. Shiotsugu knew was inappropriate. Ms. Earner also stated that she did not receive any instruction regarding the new statute procedure and that the group did not receive training. She further stated that Ms. Shiotsugu would not release appellant's cases to her without a workload meeting which Ms. Earner stated was not standard procedure. Ms. Earner stated that during appellant's workload review appellant was instructed as if she were a new agent. The Board finds that Ms. Earner's statements are not sufficient to establish error or abuse on the part of the employing establishment. There is no evidence in the record to establish that Ms. Earner was in a position to evaluate Ms. Shiotsugu's actions and determine whether she acted unreasonably in assigning appellant cases, in training, and in instituting a workload meeting. Furthermore, there is no evidence that Ms. Earner was present in the workload meeting and her assessment regarding appellant's treatment appears likely to have been based on appellant's perceptions of the situation. Melinda M. Recendez, the union steward, present during the workload meeting, did not reach the same conclusions, noting only that appellant was upset by negative comments.

Appellant alleged that Ms. Shiotsugu improperly requested that she act as a union representative for her group. The Board has adhered to the general principle that union activities are personal in nature and are not considered to be within an employee's course of employment or performance of duty.[5] Appellant has submitted no evidence to substantiate her allegation that Ms. Shiotsugu abused her supervisory authority by requesting that appellant act as a union representative and appellant has not substantiated error or abuse in an administrative request.

The Board has recognized the compensability of verbal abuse in certain circumstances, but this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.[6] Appellant has not submitted a statement describing what specifically her coworker, Ken Koelsch, said which she found abusive and therefore the Board cannot make a finding of verbal abuse based on appellant's general allegations.

[3] *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

[4] *Martha L. Watson*, 46 ECAB 407 (1995).

[5] *See Larry D. Passalacqua*, 32 ECAB 1859, 1862 (1981).

[6] *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.

The October 4, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 13, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member